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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF WASHINGTON
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6 RICHARD L. NELSON, JR.,

7 Plaintiff,

8 vs.

9 CAROLYN W. COLVIN, Acting
10 Commissioner of Social Security,

11 Defendant.

No. 12-cv-174-JPH

ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS

12 **BEFORE THE COURT** is Defendant's motion to dismiss, filed on July 5,
13 2013, **ECF No. 31**. The parties have consented to proceed before a magistrate
14 judge. ECF No. 4. Plaintiff has not timely responded to the motion.

15 Defendant seeks dismissal in accordance with Federal Rule of Civil
16 Procedure 12(b)(1). ECF No. 31 at 1. Defendant asserts Plaintiff lacks standing
because he has not suffered an injury in fact. This leaves the Court without subject
matter jurisdiction to hear the case. ECF No. 31 at 1.

17 Plaintiff's claim for relief is based on alleged error by the ALJ or the
18 Appeals Council when they denied his request to reopen a prior application for
benefits. ECF No. at 29 at 2-3.

19 The Commissioner asserts the ALJ reopened the prior (2005) application by

1 implication (a de facto reopening) when he granted benefits beginning March 21,
2 2005. ECF No. 31 at 2-3, citing *Lewis v. Apfel*, 236 F.3d 503, 510 (9th Cir. 2001)
3 (citing *Lester v. Chater*, 81 F.3d 821, 827 n. 3). Moreover, as Plaintiff has already
4 been granted the relief sought, he suffers no injury in fact, depriving the court of
subject matter jurisdiction.

5 Whenever it appears that the court lacks jurisdiction of the subject matter,
6 the court shall dismiss the action. *Arbaugh v. Y & H Corp*, 546 US 500, 506
(2006)(internal citation omitted).

7 Having reviewed the motion to dismiss Plaintiff's complaint pursuant to
8 Fed. R. Civ. P. 12(b)(1), ECF No. 31, the Court **grants** Defendant's motion to
dismiss.

9 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
10 Order, dismiss the complaint with prejudice, forward copies to the parties and
CLOSE the file.

11 DATED this 29th day of July, 2013.

12 *S/ James P. Hutton*

13 JAMES P. HUTTON
14 UNITED STATES MAGISTRATE JUDGE
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